

## REMARKS

Reconsideration and allowance of the application on the basis of the foregoing amendments and for other reasons are respectfully requested.

As noted above, this Amendment After Final is in formal response to the FINAL Office Action mailed 3/31/04. Other communications with the Patent Office since the Amendment filed 29 December 2003 included a telephone call on 2/18/04 from the Examiner proposing allowance of the application upon cancellation of the withdrawn claims, which proposal applicants' attorney felt he needed to clear with the inventors; the Examiner's follow-up telephone call of 2/24/04 wherein applicants' attorney advised that the inventors were still evaluating the advisability of filing a divisional application on the withdrawn claims; applicants filing of a divisional application on the withdrawn claims by Express Mail on March 3, 2004; a telephone call of 3/8/04 from the Examiner that he had a problem with "only" in line 4 of claims 1 and 26, and wherein he was advised that a divisional application addressed to the withdrawn claims had been Express Mailed" to the Patent Office on March 3, 2004; a Tentative Partial Amendment dated March 12, 2004 repositioning "only" and faxed to the Examiner at 703/308-7765 on March 12, 2004 and re-faxed March 16, 2004 in response to the Examiner's even date telephone call; the Examiner's March 17, 2004 telephone call that he didn't like the repositioning of "only" and which word he thought should be totally gotten rid of, and that he now wanted the claims to recite a range for the "milligausses"; and applicants' Second Tentative Partial AMENDMENT dated March 17, 2004 and faxed to 703/308-7764 as "New Draft for Discussion Purposes" 3/17/04.

Twenty-six claims (1-26) were pending in the application. Seven (1-6 and 26) stand rejected. Eighteen ((7-25) were withdrawn by the Examiner.

Initially, applicants request reconsideration of the decision to make the Action being responded to, FINAL. Applicants submit that they are still basically pursuing the same invention as theretofore, and that in view of the Examiner citing new art, the finality of the action should be withdrawn.

Applicants note that the restriction requirement has been specifically made FINAL. In reviewing the claims, applicants have observed that Claim 18 as heretofore existing was directed to the combination of "An infrared heater according to claim 17,

and a cabinet having a door mounting the heater on the inside." Thus applicants believe that Claim 18 should have been included in the invention group labeled I by the Examiner, to wit: claims 1-6 and 26 (sauna). Ergo, applicants have rewritten claim 18 as an independent claim, with additional amendment, and enclose a check for \$43 for the additional independent claim.

Other than Claim 18, the withdrawn claims 7-25 have been canceled. This because the withdrawn claims have been incorporated in a divisional application S.N. 10/792,203 filed 3/03/04 (postcard receipt) by the same inventors.

Applicants continue to traverse the restriction requirement, but have filed the divisional patent application in order to expedite the prosecution of this Group I invention application.

Claims 1-2, 4, and 5 were rejected under 35 USC 103(a) as being unpatentable over Sung (5,117,481) in view of Perlman (4,998,006); the Examiner stating that "Sung discloses substantially the claimed invention comprising a compact sauna for causing a user to sweat, dual far infrared source heating elements F1 and F2", but not "a low-level of extremely low frequency electromagnetic fields"; and that "Perlman discloses heating elements that can be used in heating panels where the device is brought into proximity with the human body". The Examiner thereafter states that "it would have been obvious to combine in order to reduce potential harmful effects of magnetic fields produced by room heating panels".

Applicants agree that it may "have been obvious to combine" Perlman with Sung "in order to reduce potential harmful effects of magnetic fields produced by room heating panels". But it is not obvious to applicants that "Sung discloses substantially the claimed invention comprising a compact sauna for causing a user to sweat", nor "dual far infrared source heating elements" that applicants have invented.

Claims 1- 2, 4 and 5 have required "continuously-active broad infrared source elements disposed in close proximity to the user so that infrared radiation absorbed by the user constitutes the primary means for inducing the user to sweat and uniformly about the user so that the user is evenly heated". There is no indication in the Song patent that he appreciated the concept of disposing "continuously-active broad infrared source elements" "in close proximity to the user so that infrared radiation absorbed by the user"

constitute "the primary means for inducing the user to sweat *and uniformly about the user so that the user is evenly heated*" (as the claim has been amended (claim portion presented here in italicized fashion to distinguish it from the old text copied from claim 1)). To begin with, Sung does not show the disposition of any infrared heaters, nor other "continuously-active broad infrared source elements", except in his circuit diagrams of Figures 3 and 4. He certainly does not show them "in close proximity to the user so that infrared radiation absorbed by the user" constitutes "the primary means for inducing the user to sweat and uniformly about the user so that the user is evenly heated". Furthermore the evidence is otherwise than that he contemplated that thought, for he employs only one (1) infrared heater F1 and does employ a fan F3 (apparently to distribute the heat by convection). Thus the claims distinguish over Sung *inter alia* by calling for "continuously-active broad infrared source elements disposed in close proximity to the user so that infrared radiation absorbed by the user constitutes the primary means for inducing the user to sweat" and "continuously-active broad infrared source elements" "disposed uniformly about the user so that the user is evenly heated". Sung's one heater F1 also cannot be deemed a "continuously-active broad infrared source elements disposed uniformly about the user so that the user is evenly heated".

These deficiencies are not made up for by Perlman. Perlman does not disclose heating elements to be used in "heating panels brought into proximity with the human body".

Nevertheless, to expedite the prosecution of this application, applicant has canceled claim 1, and made claim 2, formerly dependent on claim 1, the base claim. Thus the claims further distinguish over the references by requiring "continuously-active broad alternating-current electric infrared heaters emitting a low level of extremely-low-frequency electromagnetic fields for heating the infrared source elements". The art is devoid of a showing of "continuously-active broad alternating-current electric infrared heaters --- for heating --- infrared source elements". (Note that "only" was deleted from the claim 1 clause "continuously-active broad alternating-current electric infrared heaters emitting a low level of extremely-low-frequency electromagnetic fields for heating the infrared source elements", per earlier suggestion of the Examiner.)

Nor are the deficiencies made up for by Denki (JP2003051368) (cited by the Examiner against claims 3 and 26). The device of Denki could not be "disposed in close proximity to the user", for as shown in his Figure 5 his linear circuit 13 is partially on the same side of his heat sink 9 as his protrusions<sup>12</sup> and burning is a possibility; moreover, it is not evident that the protrusions are there to provide a safe-to-touch relationship. To make applicants' contribution even more clear, claim 2 (and hence dependent claims 4 and 5) has been further amended to require that the "continuously-active broad infrared source elements" be "safe to touch".

Moreover, as noted by applicants in previous correspondence (Amendment filed October 27, 2003), Denki is not available as prior art. 35 USC 102(b) reads: "A person shall be entitled to a patent unless -- the invention was patented or described in a printed publication in this or a foreign country, or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States.". Applicants' invention was filed 2/20/02. According to the Derwent sheets provided with the copy of the Japanese JP2003051368 document, it was published Feb. 21, 2003. The Japanese invention therefore was not patented or described in a printed publication more than one year prior to the instant application, nor prior to applicants' filing date, and thus is not available as prior art against applicants' invention.

Claims 3 and 26 were rejected under 35 USC 103(a) as being unpatentable over Sung in view of Perlman and further in view of Denki (JP2003051368). As noted above, Denki is not available as prior art against applicants' invention. Furthermore, claim 3 is dependent on claim 2, which, as pointed out above, already distinguishes over the Denki reference (and which is not prior art), especially with the "safe to touch" newly added limitation. Nevertheless, to expedite prosecution of the application, applicants have amended claim 3 to require further that the protrusions "are spaced close enough to thwart fingers being inserted between them". It isn't evident that Denki's protrusions are so spaced.

With respect to claim 26, as noted above there is no indication in the Sung patent that he appreciated the concept of disposing "continuously-active broad infrared source elements" "in close proximity to the user so that infrared radiation absorbed by the user" constitutes "the primary means for inducing the user to sweat". Sung does not show the

disposition of any infrared heaters, (nor other "continuously-active broad infrared source elements"), except in his circuit diagrams of Figures 3 and 4. He certainly does not show them "in close proximity to the user so that infrared radiation absorbed by the user" constitutes "the primary means for inducing the user to sweat and uniformly about the user so that the user is evenly heated". Furthermore the evidence is otherwise than that he contemplated that thought, for he employs only one (1) infrared heater F1 and does employ a fan F3 (apparently to distribute the heat by convection). Thus the claims distinguish over Sung *inter alia* by calling for "continuously-active broad infrared source elements disposed in close proximity to the user so that infrared radiation absorbed by the user constitutes the primary means for inducing the user to sweat". Sung's one heater F1 also cannot be deemed a "continuously-active broad infrared source elements disposed uniformly about the user so that the user is evenly heated".

These deficiencies are not made up for by Perlman. Substituting Perlman's planar infrared heater with protrusions projected towards the user for better heating effect, to generate a heat sink, and to reduce power consumption, would still not result in a device required by the claim. He certainly does not show the planar infrared heaters "in close proximity to the user so that infrared radiation absorbed by the user" constitutes "the primary means for inducing the user to sweat and uniformly about the user so that the user is evenly heated". Thus the claim distinguishes from Perlman *inter alia* by calling for "continuously-active broad infrared source elements disposed in close proximity to the user so that infrared radiation absorbed by the user constitutes the primary means for inducing the user to sweat". It also distinguishes by calling for "continuously-active broad infrared source elements disposed uniformly about the user so that the user is evenly heated".

Nor does Denki remedy the situation. To begin with and as mentioned before, he is not prior art. But even if he were, he would not supply the teachings that both Sung and Perlman are deficient in. The claim calls for more than a planar infrared heater with protrusions "projected towards the use [sic] for better heating effect, to generate a heat sink and to reduce power consumption", as noted above.

Claim 6, dependent on claim 5 dependent on claim 2, was rejected under 35 USC 103(a) as being unpatentable over Sung in view of Perlman and further in view of Grise

et al (4,485,297). Initially, applicants wish to note that Sung in view of Perlman does not disclose substantially the claimed invention, for the reasons noted above in the discussion of claims 5 and 2. Grise does not overcome their deficiencies. Thus while it may be obvious "to modify the invention of Sung and Perlman to include a plurality of bars, a pair of longitudinal strips, and a metallic conductor overlaying each stripe in order to replace other thin wire heaters and to have a high uniformity in heat propagation at reduced cost as taught by Grise", this would not have supplied the deficiencies in Sung not supplied by Perlman, nor specifically the dual heaters "having electrically-resistive elements juxtaposed to corresponding ones of the other but wherein the current flows in opposite directions at any given point in time to cancel out generated extremely-low-frequency electromagnetic fields".

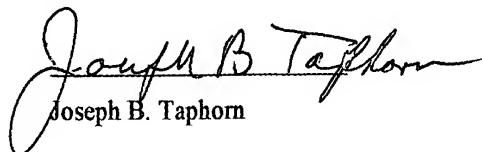
As observed earlier, applicants urge that the Examiner withdraw making the FINAL as premature.

A check for \$43 to cover the additional independent claim is attached.

Applicants' SAUNEX sauna fills a long felt medical need. The easy removal in one's home of body toxins may go a long way towards improving the health of humanity. Even autism may be reduced by the sauna's ability to readily remove heavy metals such as mercury without exposing the user to extremely-low-frequency electromagnetic fields. Applicants unique contribution to the art is heralded on pages 136 to 138 of the attached new book written by Dr. Nenah Sylver and entitled "The Holistic Handbook of Sauna Therapy". It was published in 2004 by The Center for Frequency, P.O. Box 952, Stone Ridge, New York 12484-0952.

Wherefore applicants believe that the rejected claims are allowable, particularly as amended, that the withdrawn claim 18 should be examined and found allowable; and that this application has been placed in condition for allowance, which favorable action at an early date is earnestly solicited.

Respectfully submitted,



Joseph B. Taphorn



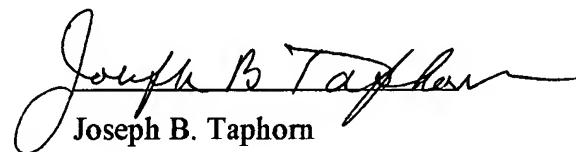
Attorney - Reg. No. 16,788

Tel & Fax 845/462-3262

E-mail [jbtahorn@prodigy.net](mailto:jbtahorn@prodigy.net)

Attachments (2)

**CERTIFICATE OF MAILING** - The undersigned certifies that this correspondence addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, has been deposited in the United States Postal System as first class mail with sufficient postage on May 17, 2004.



Joseph B. Taphorn